IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1412 of 2004

HON'BLE MR.JUSTICE K.S.JHAVERI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

ADITI SURENDRA MODI

Versus

STATE OF GUJARAT

Appearance:

MR CHETAN K PANDYA for Petitioner No. 1

MRS MANISHA SHAH, AGP, for Respondent No. 1-2

MRS VD NANAVATI for Respondent No. 3

CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 18/12/2004

ORAL JUDGEMENT

1. By way of this petition the petitioner has challenged the order passed by the Director of Post Graduate, B.J. Medical College, Ahmedabad dated 30/31st January 2001 whereby a decision was taken to suspend the petitioner for one term in the post graduate course (General Surgery) and to permit the petitioner to

continue her study as if no such order is passed.

2. The petitioner got admission for MBBS in M.S. University, Baroda and she got transferred from there to B.J. Medical College, Ahmedabad under the order passed by this Court in Special Civil Application No.4090/97. The petitioner secured 12th rank in the final year examination of M.B.B.S. and was at 18th Rank as a whole in M.B.B.S. Therefore the petitioner was admitted to the post graduate course in General Surgery with respondent no.2 College.

3. The petitioner was looking after the entire Surgical Ward of both male and female and Dr. Prashant Varma was working under the petitioner as a junior doctor. Since Dr. Prashant Varma was negligent in his duties the petitioner had reprimanded him. Thereafter the petitioner was attacked by Dr. Prashant Varma with scalpel and inflicted as many as 14 injuries to the petitioner and the petitioner was required to be admitted in Civil Hospital, Ahemdabad, as indoor patient for five days. In this connection an FIR being I-CR No.333/2003 was lodged with Shahibaug police station, Ahmedabad against Dr. Prashat Varma. In pursuance of this Dr.Prashant Varma was asked to resign as post graduate student by respondent no.2.

4. According to the petitioner, from a newspaper report, she came to know that she has been suspended for a term along with Dr. Prashant Varma.

5. Learned counsel for the petitioner submitted that the decision to suspend the petitioner for one term was taken in violation of principles of natural justice. According to him no decision has been ever communicated to the petitioner.

6. The petitioner was the original complainant. During inquiry, the petitioner was called as a witness and during this inquiry the petitioner has been implicated. According to Mr. Sunit Shah, learned counsel appearing for the petitioner, instead of imposing penalty on the real wrong-doer, the petitioner has been punished and the person who has committed wrong has resigned. Mr. Shah submitted that the action of the respondents is in violation of rule 19 of the Rules governing the appointment of post graduate residency at the Government Medical Colleges attached teaching hospitals in the State, which reads as under:

"If there is anything against them on the score

> of in duty carelessness, negligence, unpunctuality, neglect of emergency call, irresponsiveness to administrative orders, involvement in violence, criminal activity etc. or conduct unbecoming of a student, they are liable to disciplinary action which may include termination of residency after giving an opportunity to explain their position."

Thus, even as per the rules the petitioner was required to be given an opportunity to explain her position before passing the order.

7. Mrs. Manisha Shah, learned counsel for the respondents submitted that inquiry has been conducted and it is only after that the decision has been taken.

8. The inquiry report has been produced on record. However, nothing is borne out from the record that any opportunity whatsoever was given to the petitioner by way of show-cause notice. It may be that during the inquiry she might have been interrogated or cross-examined. However, that would not suffice to impose any penalty upon the petitioner without giving any notice. In that view of the matter the impugned order is required to be quashed and set aside.

9. Accordingly the petition is allowed. The impugned order dated 30-31/1/2004 is hereby quashed and set aside. Pursuant to the statement made by the Assistant Government Pleader, the petitioner was protected all throughout and therefore the decision is not implemented. The petitioner shall be permitted to continue her study as if no order has been passed against her. Rule is made absolute accordingly with no order as to costs.

[K.S.JHAVERI, J.]
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